

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

05/15/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000672

FILED: _____

STATE OF ARIZONA

CATHERINE E LEISCH

v.

PAMELA J CARGIULO

RACHELLE S FERRARO

FINANCIAL SERVICES-CCC
MESA JUSTICE CT-EAST
REMAND DESK CR-CCC

MINUTE ENTRY

EAST MESA JUSTICE COURT

Cit. No. DR2003110338

Charge: INTERFERING WITH JUDICIAL PROCEEDINGS A CLASS ONE
MISDEMEANOR

DOB: 11/24/58

DOC: 11/06/00

This Court has jurisdiction of this appeal pursuant to the
Arizona Constitution Article VI, Section 16, and A.R.S. Section
12-124(A).

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This matter has been under advisement since the time of oral argument on April 15, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the East Mesa Justice Court, the exhibits made of record, the Memoranda and arguments presented to this court.

The first two issues raised by the Appellant concern the sufficiency of the evidence to warrant the conviction and sentence. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.¹ All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.² If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.³ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁴ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁵ The Arizona Supreme Court has explained in State v. Tison⁶ that "substantial evidence" means:

¹ State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980); Hollis v. Industrial Commission, 94 Ariz. 113, 382 P.2d 226 (1963).

² State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

³ State v. Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁴ In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

⁵ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

⁶ SUPRA.

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More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁷

This Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence.

Thirdly, Appellant claims that she was denied her opportunity to speak before pronouncement of sentence. Of course, this is a right guaranteed by Rule 26.10.⁸ That rule provides in subsection B:

The Court shall: (1) give the Defendant an opportunity to speak on his or her own behalf... . This is known as the right of allocution. Arizona courts have recognized that this is a right possessed by a criminal Defendant prior to the pronouncement of sentence by a trial judge.⁹

In this case the trial judge failed to inquire of defense counsel if there was any cause why sentence should not now be pronounced or to enquire of the Appellant if she wished to speak. This Court must find error based upon the mandatory requirements of Rule 26.1¹⁰ which requires that the court "shall" give a Defendant a right to speak before pronouncement of sentence.

IT IS ORDERED affirming the judgment of guilt ordered by the East Mesa Justice Court.

⁷ Id. At 553, 633 P.2d at 362.

⁸ Arizona Rules of Criminal Procedure.

⁹ See, State v. Nelson, 122 Ariz. 1, 592 P.2d 1267 (1979).

¹⁰ Supra.

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IT IS FURTHER ORDERED reversing and vacating the sentence unlawfully imposed by the East Mesa Justice Court.

IT IS FURTHER ORDERED remanding this matter to the East Mesa Justice Court for a re-sentencing and all further and future proceedings in this case.